

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3650 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Koli Punjabhai Sardarbhai ..Petitioner

Versus

Koli Nagjibhai Dharmabhai and another.Respondents.

Appearance:

MR G.R.SHAIKH for Petitioners

MR.S.V.RAJU for Respondent No.1

MR. K.C.SHAH instructed by M.G.Doshit and company
for respondent No.2.

CORAM:J.N.BHATT,J.

June 17,1996.

ORAL JUDGMENT

In this petition under Article 227 of the Constitution of India, the petitioner has questioned the order passed by the Mamlatdar and ALT.Dhanera in tenancy case No.. 175/76 on 6.6.1979 and confirmed in appeal by the Deputy Collector, Palanpur and also further confirmed in a revision before the Gujarat Revenue Tribunal.

Learned advocate for the petitioner has firstly contended that the appellate and the revisional authorities have committed a serious error in not condoning delay in filing the appeal. Prima facie, this submission would appear to be subtle but not sound and convincing in view of the facts of the present case. Both the authorities have taken into account the relevant facts and circumstances in refusing to condone delay in filing the appeal while exercising discretionary power under Section 5 of the Indian Limitation Act, 1963.

The impugned order of the Mamlatdar and ALT.Dhanera was passed on 6.6.1979 against the petitioner. The appeal was filed on 31.7.1980. Delay was sought to be condoned on the grounds of non-intimation and sickness of the petitioner. Both the grounds are considered and rightly not accepted by the authorities below. The GRT has exhaustively and properly dealt with this aspect of the matter in para 5 of its judgment dated 18.1.1983. The reasons assigned by the Tribunal in dismissing the revision are quite justified and convincing. It cannot be said that exercise of discretionary power under Section 5 of the Indian Limitation Act, 1963 is in any way unjust, illegal and inequitable while considering a petition filed under Article 227 of the Constitution of India wherein the scope is very much circumscribed. It cannot be contended that the appellate authority and the revisional authority have exceeded their jurisdiction or have failed to exercise the jurisdiction vested in them. When the authorities below have exercised the discretionary jurisdiction after considering the relevant facts and circumstances, the writ court under Article 227 ordinarily cannot interfere with exercise of discretionary power. In view of the facts and circumstances emerging from the record of the present case, there is no substance in this petition. Incidentally, it may also be mentioned that in the impugned order of the Mamlatdar, it is also clearly recorded that the impugned order was under Section 84C of the Bombay Tenancy and Agricultural Lands Act, 1948 regularising the transaction between the parties is recorded with their consent. Therefore also, while incidentally considering the merits, there is no substance in this petition filed against the impugned order.

In the result, the petition is dismissed with no order
as to costs in the facts and circumstances of the case.
Rule is discharged.

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